

NOTICE: Summary decisions issued by the Appeals Court pursuant to its rule 1:28, as amended by 73 Mass. App. Ct. 1001 (2009), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

18-P-970

M.J.

vs.

J.S.

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

The defendant appeals from a harassment prevention order issued by a judge of the District Court requiring the defendant to stay fifty yards away from the plaintiff, remain twenty yards away from the plaintiff's property, and refrain from using an air horn while on her own property. The defendant contends that the order should be vacated because the plaintiff failed to meet her burden to establish that the defendant harassed her within the meaning of G. L. c. 258E. Finding no error, we affirm.

Discussion. In order to obtain a harassment prevention order under G. L. c. 258E, a plaintiff must demonstrate, by a preponderance of the evidence, that the defendant committed "[three] or more acts" of "[h]arassment." G. L. c. 258E, § 1. See Van Liew v. Stansfield, 474 Mass. 31, 36-37 (2016). As relevant here, an act of "harassment" is "aimed at a specific

person" and consists of "willful and malicious conduct" that is "committed with the intent to cause fear, intimidation, abuse or damage to property, and that does in fact cause fear, intimidation, abuse or damage to property." G. L. c. 258E, § 1. See F.K. v. S.C., 481 Mass. 325, 332 (2019).

Here, the plaintiff testified regarding a long history of animosity between herself and the defendant involving issues with dogs, complaints to the board of health,<sup>1</sup> and property disputes. The most recent issue involved the defendant's use of an air horn on her own property. The plaintiff testified that she had a horse riding ring on her property which was close to the defendant's property line. She and her young children would often ride horses in the ring. The plaintiff stated that the defendant could see the riding ring from her property, and that the defendant had used an air horn "many times," which caused "the horses to take off." The plaintiff was concerned for the safety of her children who could get stomped by the horses. The incident which precipitated the plaintiff seeking a harassment prevention order was one where the children were playing in the field and the plaintiff went to ride a horse in the ring. She

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<sup>1</sup> We need not address the defendant's argument that her complaints to the board of health constituted constitutionally protected speech, as the judge did not need to rely on these complaints to find that the plaintiff had met her burden of proving harassment.

then saw the defendant go over to the property line and start banging a rock against the metal fence, which made the plaintiff believe that the defendant was intentionally trying to spook the horse. The plaintiff became so fearful that she got off the horse, put him away, and went right to court.<sup>2</sup> A police officer also testified about an incident where he was speaking with the plaintiff regarding her concern about how to handle all of the issues with the defendant.<sup>3</sup> In the middle of the conversation, he heard an air horn, a "piercing sound," that made him "nervous" such that he "wanted to drop to the floor."<sup>4</sup>

This evidence was sufficient to allow the judge to conclude that the plaintiff had met her burden of establishing harassment.<sup>5</sup> There was evidence that the defendant attempted to disrupt the plaintiff's horses, on three or more occasions, by

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<sup>2</sup> The docket reflects that the plaintiff filed her complaint on February 20, 2018.

<sup>3</sup> The officer recalled that the incident took place at approximately 7:00 P.M. on September 11, 2017.

<sup>4</sup> The officer also recounted an October 19, 2017 incident where he spoke to the defendant about neighbor complaints regarding the "air horn that keeps going off." According to the officer, the defendant agreed to stop using the air horn.

<sup>5</sup> We need not address the defendant's argument regarding the lack of explicit findings since the judge's ultimate finding is supported by the record. See A.S.R. v. A.K.A., 92 Mass. App. Ct. 270, 277 (2017) (where "there clearly was evidence supporting a conclusion that there were many more than three harassing acts, the judge was not required to make written findings specifying the three acts").

using an air horn and banging on the property line fence. That the defendant's actions were willful and malicious could be inferred from the details of the interactions themselves, as well as from the backdrop of the parties' history of discord. The defendant contends that, at most, the plaintiff established an intent to place the horses in fear, not the plaintiff. Yet, the judge could have concluded that the defendant's purpose in disrupting the horses was to place the plaintiff in fear and that this purpose was, in fact, accomplished.<sup>6</sup> As the plaintiff met her burden of establishing harassment as defined in G. L. c. 258E, there was no error in the judge's issuance of the order.

Harassment prevention order  
dated March 2, 2018  
affirmed.

By the Court (Maldonado,  
Singh & Wendlandt, JJ.<sup>7</sup>),



Clerk

Entered: July 8, 2019.

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<sup>6</sup> The defendant admitted to using an air horn on her property but maintained that she did so only to keep her dog in line. She described it as a "tiny boat horn" and all that was required was "one little toot once in a while." She stated that she rarely used it, and then never outside her doorway or off of her deck, and that it would not scare a horse. It was within the judge's discretion to credit the testimony of the plaintiff and the police officer over that of the defendant. See V.J. v. N.J., 91 Mass. App. Ct. 22, 28 (2017).

<sup>7</sup> The panelists are listed in order of seniority.